

# **EXHIBIT**

# **96**

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COMMODITY FUTURES TRADING COMMISSION

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IN THE MATTER OF:

RETAIL FOREX FRAUD

-----x

140 Broadway  
New York, New York

April 7, 2016  
9:44 a.m.

DEPOSITION of JOHN DITTAMI, the witness  
herein, taken by the Commodity Futures Trading  
Commission, pursuant to Agreement, held at the  
above-noted time and place, before a Notary Public  
of the State of New York.

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2 trade with?

3 A Of the ones I just mentioned Hot  
4 Spot and ECN, actually FXL we trade with as well,  
5 EBS is an ECN, Interbank, Reuters is an ECN,  
6 Interbank, FXCM is an ECN, Fast Match is also an  
7 ECN. Off the top of my head those are the ones I  
8 can recall. We've traded with 150 banks over the  
9 years so it's hard to remember.

10 Q What percentage of profits is  
11 derived from each of the entities Effex Capital  
12 provides liquidity for?

13 A What percentage --

14 Q What percentage of profits is  
15 derived from each one of the entities Effex  
16 Capital provides liquidity for, if you know?

17 A It's extremely rough to drive but I  
18 will say the majority is derived from FXCM-related  
19 ventures.

20 Q How many FXCM related ventures are  
21 there?

22 A I'll try to count, five.

23 Q Could you tell me what they are?

24 A Sure. We provided liquidity to the  
25 Japanese, FXCM Japan, we provided liquidity to a

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2 A James would know. I think it's  
3 obviously saved down somewhere, well, recently  
4 save down somewhere but James -- I don't know how  
5 the tech group does that.

6 Q So you don't have any knowledge of  
7 how the program logic code is stored, that would  
8 be James Bradley?

9 A Yeah, I don't know how he stores it.

10 Q Do you know where the code is  
11 stored?

12 A I don't know where it's stored. I  
13 know we back up our data or we have at least  
14 recently but I don't know where it's all stored.

15 Q Do you know what software is used  
16 for executing the code?

17 A Yes.

18 Q What software?

19 A The software used is -- it's -- we  
20 license what are called K -- they're cores, KDB  
21 cores, also called K and also called Q, cores, we  
22 license from First Derivatives and KX Systems.

23 Q Where are the servers of Effex  
24 Capital located?

25 A There are servers in Tokyo, we have

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1 John Dittami

2 servers in London, we have servers in a center in  
3 New Jersey called NY2/4 and we have a server at  
4 NY7.

5 Q Are any of these servers co-located  
6 with FXCM servers?

7 A The NY7 is the co-location with  
8 FXCM.

9 Q Are the servers backed up?

10 A Yes.

11 Q How are they backed up?

12 A I don't know the technical details  
13 of it, my tech people would be able to tell.

14 Q Does Effex have the same IP address  
15 as FXCM?

16 A I don't know. I imagine we have  
17 many IP addresses but I'm not sure.

18 Q Do you know whether it's ever had  
19 the same IP address as FXCM?

20 A I honestly don't know. I think it  
21 might have but it's not my area of expertise.

22 Q Whose area of expertise would it be?

23 A James would know.

24 Q I'd like to talk about Effex Capital  
25 historically, from a historical perspective.

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2 A Yeah.

3 Q Has Effex Capital's business model  
4 changed since it was first organized?

5 A Yes.

6 Q How has that model changed since it  
7 was first organized?

8 A Very recently I decided to focus a  
9 lot less time on making to get direct clients on a  
10 sales perspective and to spend a lot more time  
11 focusing on more proprietary trading, and it was a  
12 massive shift from providing liquidity to end  
13 customers and ECP customers to deciding that we'll  
14 do better trading for our own account more often  
15 and putting more resources there.

16 Q Why did this change come about?

17 A We had a really hard time convincing  
18 people to take our liquidity.

19 Q Why?

20 A Well, there's a lot of reasons, I'm  
21 going to try to go through them. A lot of people  
22 won't take non-bank liquidity, they will not  
23 accept non-bank liquidity, even today, 2010 almost  
24 no one would accept it, very few would accept it  
25 now because the banks are applying massive amounts

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2 to make money but it's a belief system, so it's a  
3 combination of people don't want to lose their  
4 jobs, people don't want to change, people are  
5 hesitant to work with a small non-bank and take  
6 pressure from the other banks, constantly take  
7 pressure.

8 Q The fact that you Effex Capital was  
9 a non-bank was not an issue for FXCM?

10 A No, and I think that's because I had  
11 started before the transition in an employee  
12 relationship, I think if I had not started in that  
13 relationship it probably would have been an issue  
14 for them.

15 Q How did starting in a relationship  
16 with FXCM help them -- convince them that they  
17 could deal with a non-bank?

18 A I think they figured out I was the  
19 real deal, I don't think they even thought that I  
20 would be able to make money on this. It's very  
21 uncommon, not a lot of people -- a very small  
22 amount of people succeed in trading ventures but  
23 those that do succeed in an outsized way.

24 Q When Effex Capital was first  
25 organized what entities did it provide liquidity

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2 responsibility for coding program logic at Effex  
3 Capital?

4 A Coding was James Bradley.

5 Q Even from the beginning?

6 A James Bradley was coding from the  
7 beginning, then Andrew Wilson became a CTO and  
8 then Andrew left and James replaced Andrew, came  
9 back as responsible for coding. So James and  
10 Andrew.

11 Q I may get the same answer but how  
12 was the code stored?

13 A I don't know.

14 Q Do you know where it was stored?

15 A I don't know, I'm not a  
16 technologist.

17 Q Who would know, James Bradley?

18 A James Bradley would know, yeah.

19 Q What software was used for executing  
20 the code?

21 A It's the Q which is also called K  
22 which is also called the KDB.

23 Q Back then where were the Effex  
24 servers located?

25 A When we first started the Effex



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2 servers were only NY7 which is the FXCM  
3 co-location. I don't know when very quickly, it  
4 must have been when we traded EBS, so it must have  
5 been 2010 that Effex got space in NY2/4 to locate  
6 new servers and then expanded locations.

7 Q Were the Effex servers located in  
8 the FXCM server, were they one in the same?

9 A NY7, the Effex servers -- they were  
10 Effex servers, they weren't FXCM servers.

11 Q They were not FXCM servers?

12 A No, they're not FXCM servers,  
13 they're Effex servers paid for by Effex, but they  
14 resided in NY7 in a space that FXCM owned or  
15 leased.

16 Q Were the servers backed up?

17 A They were backed up, yeah.

18 Q How were they backed up?

19 A I think in the early days I think  
20 FXCM backed them up and then as quick as we could  
21 we created our own back up system, James would  
22 know the details. I think in very, very early  
23 days we asked FXCM's assistance to back them up  
24 but -- I believe -- this is rough recollection, we  
25 bought servers to store the data but I believe

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2 this all was happening very quickly, this whole  
3 transition, they booted me off the floor and put  
4 me in a floor up above.

5 Q So while you were heading this  
6 venture that you described at FXCM, you were  
7 located on the tenth floor?

8 A While I was head of ventures as an  
9 FXCM employee, yes.

10 Q Then at some point in time do you  
11 remember when you were moved to a --

12 A At the point in time we separated  
13 and we were told we had to be a separate entity,  
14 they moved me right away.

15 Q Where did they move you to?

16 A Just this corner, extremely tiny  
17 conference room that wasn't being used, opposite  
18 corner of the building.

19 Q In the tenth floor?

20 A Tenth floor. Then their counsel,  
21 David Sassoon, said -- the intent was I was going  
22 to get out of there, I have to find office space.  
23 They said, look, you're still here, you have to  
24 move to another floor.

25 Q What floor?

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2 A I think it was the eleventh floor.

3 Q How long did you stay at the  
4 eleventh floor?

5 A Until we moved into our Jersey City  
6 office location. Again, I'm fuzzy on dates it's  
7 so long ago. I'll correct them and get you right  
8 dates but I think our move in date was April 2011  
9 or March 2011. We contracted the space the very  
10 first week of January 2011, started negotiating  
11 the space before that in 2010 but we can get you  
12 exact dates, I don't want to get them wrong but  
13 that was roughly.

14 Q Are you familiar with the FXCM  
15 retail Forex business model that was in place  
16 between December 2010 and August 2014?

17 A I'm familiar through interaction  
18 with FXCM.

19 Q So you have an understanding --

20 A I have an understanding of it, yes.

21 Q What is your understanding?

22 A My understanding is that they're an  
23 agency model, they take liquidity providers prices  
24 and mark them up and that's how they earn their  
25 revenue through marking up the best price of the

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2 A No.

3 Q Did there come a time when the EES  
4 Division was spun off from FXCM?

5 A The EES Division was never spun off,  
6 the EES Division became -- I built Effex Capital  
7 which became the replacement as my independently  
8 own Effex Capital.

9 Q So is it fair to say that there came  
10 a time when the EES Division ceased doing business  
11 at FXCM?

12 A Yes.

13 Q When was the EES Division -- when  
14 did the EES Division cease operations as a  
15 division of FXCM?

16 A It would have been in between --  
17 March 23rd Effex Capital was formed, so it would  
18 have been between that and -- I'm not sure how to  
19 draw the line but right in that March 2010 region,  
20 and the end of March 2010 region.

21 Q Why did the EES Division cease doing  
22 business as a division of FXCM?

23 A FXCM said that EES would not be able  
24 to trade as a part of FXCM, EES could not be  
25 connected -- could not be owned or operated by

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2 FXCM.

3 Q Who at FXCM said that?

4 A William Ahdout would have said it  
5 for sure, Ken Grossman would have said it for  
6 sure, I can't remember if there were others.

7 Q Do you remember whether William  
8 Ahdout told you why EES could not be division of  
9 FXCM?

10 A I can't remember, he just said  
11 roughly you can't trade the retail pool as  
12 connected. I don't remember the details.

13 Q Do you remember anything that David  
14 Sassoon said regarding the ability of EES to be a  
15 division of FXCM?

16 A No, I don't remember David Sassoon.  
17 I don't recall anything. Most of the stuff they  
18 handled.

19 Q Were you given any reason why EES  
20 needed to cease being a division of FXCM?

21 A The general reason that was given  
22 was EES cannot trade as part of FXCM.

23 Q Did they tell you why it could not  
24 trade as part of FXCM?

25 A I don't remember if they said why, I

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2 Exhibit No. 9. Can you please review it and let  
3 me know when you're done.

4 (Witness perusing document.)

5 A Yes, I'm fine.

6 Q Before we go on to Exhibit No. 9  
7 just backing up for a minute. I believe that you  
8 stated that it was your understanding that your  
9 future relationship with FXCM would mirror the  
10 employment agreement, is that a correct  
11 understanding?

12 A That is correct.

13 Q That would mean that in mirroring  
14 the employment agreement there would be a 70/30  
15 splint under the agreement?

16 A It would be roughly approximate,  
17 yes.

18 Q Approximately 70/30 split; is that  
19 correct?

20 A Yes. At the beginning, yes.

21 Q That would carry over into a  
22 services agreement; is that correct?

23 A Well, the 70/30 split would not  
24 carry over into a services agreement. Ken  
25 Grossman said we would not have 70/30, this has to

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2 be negotiated has to be per million. Ken Grossman  
3 was very clear that -- and I don't understand why  
4 he wanted the per million and that we would  
5 negotiate it over time.

6 Q But the per million was essentially  
7 a 70/30 split?

8 A Initially it was set to my  
9 estimation, yes, correct, 70/30 if my estimation  
10 as to what the income would be at that point in  
11 time.

12 Q What was your estimation of the  
13 income at that point in time?

14 A Given it was \$21 per million I was  
15 paying my estimate would have been \$30 per  
16 million.

17 Q \$21 per million would go to FXCM and  
18 the remainder would go to Effex; is that correct?

19 A That is correct.

20 Q Taking a look at Exhibit No. 9 it  
21 appears that you, David Sassoon, William Ahdout  
22 and Kenneth Grossman had an earlier meeting; is  
23 that correct?

24 A Yes, looks that way.

25 Q Because the subject is recap

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2 paragraph that you have decided to open your own  
3 proprietary firm; is that correct?

4 A Yes, that's correct.

5 Q Therefore, you decided to resign as  
6 an employee of FXCM?

7 A That's correct.

8 Q Is the proprietary firm that you're  
9 referring to in this document Effex Capital?

10 A It is.

11 Q You state in the last paragraph that  
12 it is the understanding of both parties to enter  
13 into a licensing agreement on economic terms  
14 similar to the employment agreement, do you see  
15 that?

16 A Yes.

17 Q What did you mean by that statement?

18 A I wanted to enter into an agreement  
19 that would take many of the terms from the  
20 employment agreement and ensure that they were  
21 contractually memorialized.

22 Q Did that include an approximate  
23 breakdown of profits 70/30 split?

24 A An approximation of that, yes. In  
25 this letter this would have included that as one



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2 of the economic terms, yes.

3 Q So you mean that the new agreement  
4 would reflect payments to FXCM that mirror the  
5 profits described in the Letter of Intent?

6 A That was our intent on this day,  
7 yes.

8 Q You discuss your resignation with  
9 members of FXCM prior to submitting the letter; is  
10 that correct?

11 A Yes.

12 Q Who did you discuss it with?

13 A William Ahdout mostly, that's what I  
14 recall speaking to William, I could have spoken to  
15 others.

16 Q What did you say to William?

17 A This was the conversation where  
18 William says, you can't be part of it. I would  
19 have said to William, I'm very concerned about,  
20 you know, this ending the relationship based on my  
21 employment contract I'm very concerned about, this  
22 is bad for me and I'm concerned about it, I would  
23 have said that.

24 Q Would you have said anything else?

25 A I want to make sure that if, you

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2 know, I waive my rights to this employment  
3 agreement I want to make sure that we continue to  
4 do business together and we have agreements to do  
5 business together.

6 Q Did you discuss the terms of what  
7 doing business together would mean?

8 A Terms would have been generally  
9 discussed because we want to make sure it's  
10 economically similar or very close to what our  
11 employment agreement economically.

12 Q When you say the economics you're  
13 referring at least in part to the 70/30 profit  
14 split?

15 A Yes.

16 Q Was the new agreement referenced in  
17 this letter dated April 14, 2010 set forth in  
18 documents titled Service Agreements between Effex  
19 Capital and FXCM, LLC?

20 A No, this license agreement was never  
21 created, services agreement was what was created.  
22 We could never negotiate -- we never came to  
23 negotiation on the license agreement.

24 Q Setting aside the license agreement,  
25 the terms and conditions of the agreement were to

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2 A Exhibit 12.

3 Q Section 3.1?

4 A Yes.

5 Q Effex Capital paid FXCM Holdings a  
6 fee of 21 per million notional volume; is that  
7 correct?

8 A Yes, that's correct.

9 Q How was the fee of 21 million  
10 arrived at?

11 A It was to be a rough approximation  
12 of the 70/30 initial economic terms, the  
13 employment agreement.

14 Q Who was involved in arriving at the  
15 fee of 21 per million?

16 A I would have created an -- it would  
17 have been William for sure and me, I would have  
18 created an estimate of what I expected trading  
19 profits could be and take 70 percent of it to come  
20 up with 21.

21 Q Do you remember any exchange with  
22 William Ahdout regarding the calculation of the 21  
23 per million?

24 A No, it's so long ago.

25 Q So it's fair to say that the fee of

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2 I believe that's where FXCM put an accounting in  
3 -- I don't know if it's an accounting entry, I'm  
4 not sure, the \$2 million number as an entry, it's  
5 FXCM prime account. I believe that's what that  
6 account is. It's hard to go back but I believe  
7 that's what that means.

8 Q The April trading profits refer to  
9 FXCM's share of the 70/30 split of profits that  
10 we've been discussing?

11 A Yes.

12 Q In the sixth paragraph from the top.

13 A I believe it probably would have  
14 been based as \$21 per million but I can't  
15 remember. Yes, it's approximately the 70/30.

16 Q In the sixth paragraph you type from  
17 the top, you type that, quote, "The other option  
18 is that the account is fully funded by my profit  
19 share percentage, close quotes. Do you see that?

20 A Yes, I do.

21 Q My profit share percentage refers to  
22 the 30 percent share of the profits Effex receives  
23 pursuant to the services agreement?

24 A That's correct.

25 Q This is 30 percent of the profits

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2 weren't regularly consistent. They've never seen  
3 or requested my -- they've certainly never seen my  
4 income statements and balance sheets.

5 Q Do you know whether they would be  
6 wanting to track your payments and expenses so  
7 that the rate you were paying could be adjusted to  
8 a 70/30 split?

9 A Yeah, I think so. I think they  
10 wanted to know how to position their negotiation  
11 power, I think they wanted to make sure that I'm  
12 not taking advantage of them just like I'm trying  
13 to protect against being taken advantage by them.  
14 They want to know so that they wanted to be able  
15 to negotiate.

16 Q Can I have the exhibit back.

17 MR. DALY: Actually, before you  
18 return this exhibit.

19 BY MR. DALY:

20 Q I just want to track the timeline of  
21 Exhibit 15 with you, Mr. Dittami. At 17:13:27 the  
22 top e-mail appears -- the top e-mail appears to  
23 have a time stamp of 17:13:27, correct?

24 A Correct.

25 Q That's where J. Rosenfeld asks you,

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2 of them.

3 Q Did any other market makers or  
4 liquidity providers provide the same information  
5 to FXCM?

6 A No, not to my knowledge. I believe  
7 it's publicly available for all the liquidity  
8 providers, they public, but not to my knowledge  
9 would they have provided it.

10 Q Why would Effex then provide it?

11 A You know, we have to -- we have to  
12 build a relationship of trust where they know I'm  
13 not taking advantage of them, they're not taking  
14 advantage of me. We'd provide it when it was to  
15 our benefit to provide it, and not provided it  
16 when we felt it was not to our benefit to provide  
17 it to FXCM. As a general rule, if it helps build  
18 a relationship and trust whether it be this or  
19 anything else we're going to provide it, we're  
20 going to be transparent. Where it doesn't I'm  
21 going to be careful not to.

22 Q Directing your attention to the  
23 second paragraph where you type, quote, "Our first  
24 full month trading was May, so annualize since  
25 then, we're looking at 35.5 MM annualized revenue

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2 expenses just under 2 MM, so 35.5 MM net income  
3 for Effex, that's about 23 MM annualized bottom  
4 line for FXCM," close quotes. Do you see that?

5 A Yes, I do.

6 Q Can you tell us what you mean by  
7 that statement?

8 A I have in my head that's roughly  
9 about 70 percent of the net income after expenses,  
10 so it's roughly about the 70/30 which is still in  
11 my head as a rough guideline.

12 Q Was it also a known to Drew Niv and  
13 to William Ahdout that the 70/30 percent split was  
14 being used as a general guideline?

15 A They knew it was used as a general  
16 guideline although Ken Grossman, you know, it's  
17 hard because our general guide for employment  
18 contracts Ken Grossman would regularly and  
19 consistently -- not necessarily Drew, he would  
20 regularly and consistently have to remind us, you  
21 guys are per million, you're per million.

22 Q Why was he doing that, do you know?

23 A I don't know, he said it's per  
24 million but in our heads from this transition it's  
25 still in our heads that's roughly at this very

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2 short window of time right after the separation,  
3 that's roughly what our economic terms are  
4 roughly.

5 Q Based on Exhibit 17 Effex made \$35.5  
6 million in annualized revenue in 2010, correct?

7 A Correct. No -- annualized revenue,  
8 correct, yes.

9 Q That money was made through trading  
10 and market making, correct?

11 A That is correct.

12 Q The market making occurred on FXCM's  
13 retail Forex platform, correct?

14 A Correct.

15 Q Effex had \$2 million in expenses,  
16 correct?

17 A Correct.

18 Q According to this e-mail Effex made  
19 33.3 million annualized net income in 2010,  
20 correct?

21 A That's actually not correct, that's  
22 net income before payments to FXCM.

23 Q Before payment to FXCM?

24 A That's correct.

25 Q According to this e-mail 23 million



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2 it was more restrictive. I know they created a  
3 drive at some point and I don't recall when, that  
4 was the only thing I could access on their network  
5 for saving files, it was a separate drive. Again,  
6 I don't recall when they did that but it was set  
7 up so that I couldn't do anything other than this  
8 control drive.

9 Q Did other Effex employees have the  
10 same access that you had at that time?

11 A Yes. To the same restricted drive,  
12 yes.

13 Q After Effex was formed how did you  
14 and other Effex employees access the FXCM systems?

15 A We actually had to use a VPN to  
16 access, because we're co-located in NY7 for things  
17 I don't understand technically but we had to be  
18 behind their firewall in order to access our  
19 trading software on our servers at their co-lo,  
20 but then that access was further restricted by  
21 technology at FXCM. It's beyond my scope of  
22 understanding but.

23 Q How was it further restricted?

24 A It was restricted so that -- what I  
25 do understand is that they didn't wanted us to be

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2 able to touch their box, their code, their data.

3 I understand we needed access to get through the

4 firewall to work on our code that's in their

5 co-located server, and we wanted a place to have

6 files that we could use to, you know, if we wanted

7 to show files to FXCM or show any data or

8 something to FXCM, but I know that we couldn't get

9 anywhere without talking to Art -- I'm going to

10 mispronounce his last name, Bartchenko.

11 Q Batyuschenko?

12 A Batyuschenko, that sounds better

13 pronunciation.

14 Q I don't know if it is.

15 A But he had the controlled access, he

16 was in their tech group, very -- they don't want

17 us anywhere near their systems. It's a part of

18 that Chinese wall that we talked about earlier.

19 Q After Effex Capital was formed, did

20 FXCM continue to have access to Effex internal

21 systems?

22 A I don't think they had -- our server

23 is co-located there but I don't know what security

24 protocols are on those servers.

25 Q When you say our servers is

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2 co-located there, you don't mean that you were  
3 using the same server, you mean that they were  
4 co-located next to each other?

5 A Yeah, our Effex servers are  
6 co-located next to their servers and I don't  
7 understand the semantics of what rights they had  
8 to have to be able to protect themselves, and like  
9 they wanted to be able to -- if they thought there  
10 was a problem they wanted to be able to shutdown  
11 that computer. So I don't understand the  
12 semantics as to where the access on the box lies  
13 and sits but as a general proposition I wouldn't  
14 want them to be able to look at our code.

15 Q After it was formed did Effex  
16 Capital personnel continue to access the FXCM  
17 networking systems by logging through VPN?

18 A Yes, they had to in order to get to  
19 our -- the core reason for the VPN, they had to,  
20 we couldn't get to our -- behind the firewall to  
21 our servers.

22 Q So the access to VPN would give you  
23 access beyond the firewall; is that correct?

24 A To their front of the firewall and  
25 control to wherever they set that VPN up to, not

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2 to their whole systems. Nowhere close to their  
3 whole systems. They wanted as little as possible.

4 (Communication marked Exhibit 19A  
5 for identification.)

6 Q Let me show you what I've marked as  
7 Exhibit 19A and give you Exhibit 19A. Please  
8 review it and let me know when you're done  
9 reviewing it.

10 (Witness perusing document.)

11 A Yes, I've reviewed it.

12 Q Do you recognize it?

13 A Yes, this looks familiar.

14 Q What is Exhibit 19A?

15 A I don't know if it's an e-mail or  
16 message, it's a communication between Chris Meyer,  
17 my COO and Evan Milazzo regarding VPN.

18 Q Directing your attention to item  
19 number two, do you see item number two?

20 A Yes, I do.

21 Q Malizzo states, quote, "because you  
22 will be connecting over VPN, the BNS will seem a  
23 little slower to react than if you're sitting at  
24 the office," do you see that?

25 A Yes, I do.

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2 Q What is a VPN?

3 A My basic understanding of it is an  
4 ability for us to connect over the internet to a  
5 virtual private network into their -- through  
6 their firewall.

7 Q What is a BN?

8 A It's a virtual machine.

9 Q What is that?

10 A I think -- again, it's a basic  
11 understanding. Virtual machine, I believe that  
12 they have like these machines that when you log  
13 into a VPN it generates the processing power where  
14 you would see the files on desktops, et cetera. I  
15 think it's a dedicated machine, it's like machines  
16 that I could use one day and somebody else uses it  
17 another day. I believe it's machines that kind of  
18 float, whose using them when and how and something  
19 like that. I don't understand the technical  
20 issue.

21 Q Does Exhibit 19A refresh your  
22 recollection that as of February 12, 2011 Effex  
23 personnel had VPN access to the FXCM network?

24 A Yes. As I said, yes. Yep.

25 Q This applied to all of Effex

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1 John Dittami

2 personnel; is that correct?

3 A Yes, they would have to be assigned  
4 from FXCM. They are assigned to everyone who FXCM  
5 would assign an identifier in a controlled access,  
6 FXCM had to assign -- we couldn't access it  
7 without an assignment by FXCM.

8 Q Up to when did Effex have access via  
9 VPN to FXCM networking systems?

10 A For a long time until definitely  
11 2012, I think in 2013, I'm not sure if it went  
12 into 2014 or not, I'm just not sure, but it was  
13 required in order for us -- actually, to now as a  
14 matter of fact.

15 Q Until now?

16 A I'm not sure if it's until now. Not  
17 for me. I think we may have a backup but I don't  
18 know if we've used it in a long time. This is to  
19 get access to our servers and our boxes and safety  
20 and security, that's the purpose of the VPN,  
21 that's the reason why it's required. So I'm not  
22 sure actually if James still has access or if it's  
23 been completely shut -- no, actually -- I have to  
24 get clarity. I think its been completely shut  
25 off, I think they found a different way to get us

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1 John Dittami

2 to our servers but -- it's confusing to me, we  
3 haven't used them in so long.

4 Q Correct me if I'm wrong, you said  
5 that you had access -- Effex employees had access  
6 via VPN to FXCM at least through 2013?

7 A Yes, that's correct, yes. That is  
8 true.

9 Q How about 2014?

10 A I believe so but I can't recall.  
11 Yes, I believe we didn't. It would be when I  
12 hired Ryan Berse as an Effex employee, this is  
13 when it would have -- either we stopped using it  
14 or declined use or cut off users because Ryan  
15 Berse's job was to work with FXCM's technologists  
16 to find another way that we could access our  
17 servers without needing to use our VPN, try to  
18 build something to actually access our servers but  
19 not through needing a VPN to do it.

20 Q That was in 2014?

21 A Whenever we hired Ryan Berse.

22 Q You don't know?

23 A I can't recall.

24 Q If you don't know, we just want your  
25 recollection, that's all.

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1 John Dittami

2 A I'm just trying to help, yes. I  
3 can't recall exactly.

4 Q Do you know whether Effex still has  
5 access via VPN to FXCM?

6 A I actually don't know. I know I  
7 don't. If anyone did it should only be one  
8 employee which would be James Bradley, but I don't  
9 know if that's been cut off or not cut off, we  
10 shouldn't be using it, I would have told him not  
11 to use it, it should have been cut off.

12 Could I have Exhibit 19A back.

13 (Handing.)

14 (E-mail chain dated 12/28/12 marked  
15 Exhibit 20 for identification.)

16 Q Let me show you what I've marked as  
17 Exhibit 20. Please take a look at it and let me  
18 know when you're done reviewing it.

19 (Witness perusing document.)

20 Q Exhibit 20 is an e-mail chain dated  
21 December 28, 2012, from Ryan Leonard to you John  
22 Dittami and the subject is, quote, "My desktop  
23 access," close quotes.

24 A I see it.

25 Q Do you recognize this e-mail, this



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1 John Dittami

2 exhibit?

3 A Yes.

4 Q I'm directing your attention to page  
5 three.

6 A Yes.

7 Q Can you read that page into the  
8 record?

9 A Starting with "Guys, this is super  
10 frustrating"?

11 Q Yes.

12 A "Guys, this is super frustrating  
13 again, I can't log onto my VPN to my desktop,  
14 issue happened last week, was fixed, issue has  
15 happened over and over again. Yes, I have  
16 terminal but it's not the same as desktop and I'm  
17 trying to run an independent business here. The  
18 business requires that I have access to our boxes  
19 that unfortunately we can't access except through  
20 your VPN of which we have no control.

21 "Can we work this out, very, very  
22 frustrating, I need to be able to manage this  
23 business independent of FXCM VPN and for some  
24 reason every couple of weeks of late or months in  
25 the past I have some crap where my desktop isn't

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1 John Dittami

2 accessible or doesn't hit lists or gets pushed for  
3 God knows what, maybe someone using my desk at the  
4 moment, who knows but we're paying tens of  
5 millions of dollars of revenue against expenses to  
6 FXCM and yet as CEO I can't log onto my desktop,  
7 it's stupid.

8 "Please get my desktop log in away  
9 from any of the crap, stick it in a closet for all  
10 I care, let me access it for Christ's sakes.  
11 Also, if that isn't cool then get us set up so we  
12 can conduct our business without needing to do it  
13 via VPN to FXCM sites. This is the longer term  
14 solution term and must do solution."

15 Q Then turning your attention to page  
16 one.

17 A Yes.

18 Q The third paragraph in the middle of  
19 the page, did you see that?

20 A Yes, starting with sorry?

21 Q Yeah. Could you read that  
22 paragraph?

23 A "Sorry for pissy e-mail, just very  
24 frustrated to lose desktop access so often, so  
25 much recently. VMs are tough, basically running

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1 John Dittami

2 off VM basically means to do all other business  
3 stuff, I'm running off two machines."

4 I will reread this sentence slowly  
5 for clarity. The VMs are tough, running off VM  
6 basically means that to do all other business  
7 stuff I'm running off two machines, can't print  
8 docs from VPN for business stuff, (has been doing  
9 legal doc galore)," close parentheses, "got  
10 e-mails in multi places, can't run files saved in  
11 one place to another, like all the Q research  
12 codes, stuff that I write, can't see trading on  
13 the same machine, I doc my business work from et  
14 cetera at, at end of day we need to figure it out  
15 what can and can't be done offline and I need to  
16 shift them out, we can't do without FXCM VPN to be  
17 a minor portion of what we can do."

18 Q Could you tell us what the issue was  
19 in this exhibit?

20 A I was clearly angry. Two ways to  
21 access the VPN, virtual machines or a desktop.  
22 Virtual machines being machines that -- the  
23 virtual machines being as I think I noted the same  
24 machine people are coming on and off the machine  
25 or a desktop is actual hardware sitting in their

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1 John Dittami

2 office.

3 I need access to our servers, this  
4 is in here, for private trading, my guess is that  
5 the virtual machines broke and I couldn't get  
6 access, this is critical to my business risk, I  
7 don't want this, I want the desktop for myself  
8 personally and also for James Bradley who is the  
9 other one which is why I'm trying to remember if  
10 we had it, to have a backup so that if they break  
11 their virtual, if their VMs break or fail to work  
12 well like here, I'm not in risk trouble, I can  
13 access our servers and in their co-lo and I can  
14 resolve risk, it's extremely important to me.

15 I need to be able to access those  
16 servers and this is me being angry, it was broken  
17 and they're clearly -- I get angry when I think I  
18 have risk to my profits and to my business and  
19 clearly I'm saying, you know, either find another  
20 solution for us so we don't have to use your VPN  
21 or make sure that there's a backup there so if I  
22 need to access our servers I can.

23 The other thing is we didn't have an  
24 essential e-mail server, so I didn't have -- we  
25 didn't have e-mails saved, so either the e-mails

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1 John Dittami

2 for me, you know, went to like just these  
3 desktops, like this desktop in Outlook, so knowing  
4 to me that, you know, now I got to figure out what  
5 to do and then ultimately we got an essential  
6 e-mail server in 2013 for reasons like this, I  
7 can't get my e-mails when I'm working on a machine  
8 -- a virtual machine that ten people are changing  
9 around on, how am I going to get e-mails.

10 Q In looking at Exhibit 20, is it  
11 correct to say that you and Effex Capital  
12 employees still had VPN access to FXCM as of  
13 December 27, 2012?

14 A Yes.

15 Q Does it also mean that Effex Capital  
16 employees had desktops at FXCM that you accessed  
17 through VPN?

18 A James Bradley and myself would have  
19 as of that, yes.

20 Q Only James Bradley and you?

21 A I believe it was only James Bradley  
22 and me. If there are any --

23 Q Does it mean that --

24 A -- parties.

25 Q Go ahead.

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1 John Dittami

2 A I believe --

3 Q Does it mean as of December 27, 2012  
4 Effex Capital was still part of the FXCM  
5 networking system?

6 A No, Effex Capital was not part of  
7 the FXCM networking. We're not part of the  
8 networking, we have an access to the firewall into  
9 their networking system. I don't know, I guess  
10 the answer is yes or no, it's a very semantical  
11 question. I guess the answer is yes. Let me  
12 change that and say yes, it's very semantical but  
13 yes.

14 Q Does this mean that as of December  
15 27, 2012 Effex Capital could not fully conduct  
16 business except through VPN connection to FXCM?

17 A Yes.

18 Q When Effex Capital move from FXCM  
19 network to its own server?

20 A After we hired Ryan Berse and  
21 finally convinced FXCM to help us get another way  
22 to our servers.

23 Q When was that?

24 A I can't recall the date. Would have  
25 been after we hired Ryan Berse, hired him for that

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1 John Dittami

2 purpose.

3 Q When did you hire Ryan Berse?

4 A I don't recall the date.

5 Q Do you remember a year?

6 A I believe it was 2013 or 2014.

7 Q I believe you've answered this but I  
8 just want to make clear and sure that we have your  
9 answer. Does Effex Capital still make use of VPN  
10 access to FXCM?

11 A I don't, I don't know about James  
12 Bradley, I don't know if James Bradley ever uses  
13 it. I would have told him and I don't know if he  
14 still has it, but I wouldn't want him to. James  
15 Bradley would be very concerned about having a  
16 backup for our risk purposes to be able to get to  
17 our boxes.

18 Q Are you aware whether any other  
19 liquidity provider had access to the FXCM network  
20 via VPN?

21 A I'm not aware nor would I be aware.

22 Q Was there any time when Effex  
23 Capital shared the same IP address and server with  
24 FXCM?

25 MR. HENDERSON: I'm sorry, could you

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1 John Dittami

2 read that question back again.

3 (Whereupon, the record was read as  
4 requested.)

5 Q If I may repeat it. Was there a  
6 time when Effex Capital shared the same IP address  
7 and server with FXCM?

8 A I don't know whether we shared an IP  
9 address because I'm not a technician, and I also  
10 can't recall having shared -- we had our own  
11 servers, so I can't recall sharing server -- we  
12 had our own servers, I can't recall sharing use of  
13 servers with our stuff and their stuff. If it was  
14 I wouldn't be happy about it.

15 Q After Effex was organized did Effex  
16 Capital employees continue to use FXCM e-mail?

17 A After Effex was organized, yes.

18 Q For how long?

19 A I can't recall for how long but it  
20 was -- as soon as -- I was using Jada Tommy at  
21 FXCM.com and as quick as possible that I could get  
22 people to stop sending me e-mails to FXCM account,  
23 let them know I have a new e-mail address and  
24 continually tried to get all of my communications  
25 through Effex. I would have used it to check



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1 John Dittami

2 that isn't their business.

3 Q Does Exhibit 22 refresh your  
4 recollection that you continued to use FXCM's  
5 instant messenger service until at least August  
6 31, 2011?

7 A Yes, that sounds --

8 Q Do you know to what date Effex  
9 Capital employees continued to use FXCM's instant  
10 messenger?

11 A I don't know to what date they  
12 continued to.

13 Q Do you know what year?

14 A I don't know what year. I believe  
15 it would have been past 2011 though. I believe it  
16 would have been 2012 but I don't know what year.

17 Q When Effex Capital was formed how  
18 was it capitalized?

19 A How was it capitalized. Well, with  
20 my personal funds, John Dittami personal funds,  
21 the only owner, et cetera there. The trading  
22 margin which is not Effex Capital, the trading --  
23 getting a line to do trading was through that  
24 Effex prime account, that's my line to do trading  
25 but that's not my capital.

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1 John Dittami

2 informational value to them help me in the  
3 negotiation and it worked.

4 Q After it was organized did Effex  
5 Capital continue to use FXCM employees to perform  
6 work for Effex Capital.

7 A We did use FXCM employees to perform  
8 work for Effex Capital, yes.

9 Q Who from FXCM did Effex Capital use  
10 to perform work at Effex Capital?

11 A Alex Kochel, Darren Merwitz, but I  
12 want to make one -- on the question you said for  
13 Effex Capital, the work is primarily not  
14 necessarily for Effex Capital, I'm sure -- Alex  
15 Kochel and Darren Merwitz is the answer, yes, yes,  
16 those are the two.

17 Q Did Alex Kochel and Darren Merwitz  
18 receive a bonus from Effex Capital?

19 A They did, not every year but they  
20 did, I think one year they did.

21 (E-mail chain dated 2/20/11 marked  
22 Exhibit 24 for identification.)

23 Q Let me show you what I've marked as  
24 Exhibit No. 24. Please review it and let me know  
25 when you're done reviewing it.

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1 John Dittami

2 that they're doing something else, so there's no  
3 use trying to hide it, be transparent, the best  
4 way to keep that trust and relationship and they  
5 will find out, it's small.

6 Q I believe you testified earlier that  
7 you want to be transparent with FXCM because you  
8 do not want to jeopardize your relationship with  
9 them; is that correct?

10 A That's correct, yes.

11 Q Why was your relationship with FXCM  
12 so important to you at this point in time, the  
13 time of Exhibit 25?

14 A Because I was generating positive  
15 net income, it's very important to my business to  
16 continue to draw positive net income off this  
17 business.

18 Q What percentage of the income you  
19 were generating was derived through FXCM?

20 A On the date of this exhibit probably  
21 nearly on July 13th nearly all of it at that time,  
22 although I don't know when I started EBS, it must  
23 have been after this because another part of this  
24 exhibit is me showing up a little bit to them that  
25 I've just struck a deal with the largest

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1 John Dittami

2 A Discussion between Darren Merwitz  
3 and myself.

4 Q Directing your attention to the  
5 third entry of Exhibit 26 where you state, "Are  
6 you ready for me to pass book to you," do you see  
7 that communication?

8 A Yes, I do.

9 Q What did you mean by this question  
10 to Darren Merwitz?

11 A I want Darren to monitor the  
12 dashboard -- we have a dashboard that's  
13 operational, has rejection ratios on it, it has  
14 technology alerts, I want to Darren to at 10:30 at  
15 night I want him to watch and ask him to call me  
16 if he sees any technology problems, any execution  
17 problems, or any trade operational problems  
18 between FXCM and us, and I want him to call me and  
19 I want him to monitor for me and call me and wake  
20 me up if there are any issues like that.

21 Q Is this an example of Effex Capital  
22 trading book being traded by an FXCM employee?

23 A No, this is not an example of that.

24 Q What is it?

25 A This is an example of him monitoring

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1 John Dittami

2 the dashboard to alert me if there's any trade  
3 position outs that are on this dashboard --  
4 monitoring the dashboard, we don't have manual  
5 trading, we have algorithmic computers running,  
6 the dashboard is over this algorithmic computer.

7 I want to go to bed at night, I  
8 asked if we could use Darren to keep an eye of our  
9 Effex dashboard, the dashboard is call me if  
10 there's any trade outs, any trades that do not  
11 reconcile between us and you call me, I have to  
12 resolve them if there's risk, and the reason FXCM  
13 would want that is I bet FXCM would wish every LP  
14 would do that.

15 You know, they want to know if  
16 there's a trade or position risk that they have to  
17 manage. Also call me if rejection ratios are  
18 high, there's alerts on the dashboard that say  
19 rejections are high. We're constantly monitoring  
20 our rejections because our obligation is to be the  
21 best provider, and if there are rejections I may  
22 have to make changes or I may have to turn off,  
23 FXCM wants it turned off if they think an  
24 execution is bad. So Darren has the ability to  
25 turn the dashboard off but there's not trading

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1 John Dittami

2 going on.

3 So watching operations, alerting to  
4 any -- if execution quality gets bad is another  
5 thing he's watching, and they let me use Darren  
6 from time to time to -- in off hours where I was  
7 sleeping to monitor that on behalf, or in the case  
8 where I staffed employees, as I did, and when one  
9 of them has to use the bathroom or one of them had  
10 to go out for lunch or something, I would ask them  
11 to keep an eye in case any risk issues to call us,  
12 benefits them.

13 Q How often did FXCM employees monitor  
14 dashboards for Effex?

15 A I don't know when they stopped, it  
16 was regularly for awhile then I finally got my  
17 trading staff overnight, probably after I opened  
18 my Japan office, I'm not sure when I got that open  
19 which was the overnight house which was the hours  
20 Darren was in Australia those hours. Darren was  
21 always in Australia.

22 After I opened my Tokyo office I  
23 would have had staffed -- overnight staffed  
24 monitors and then in that situation would have --  
25 maybe if they have to use the bathroom or

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1 John Dittami

2 something they might have asked, so it would have  
3 dwindled down until we finally had -- I don't  
4 remember when this is, absolutely nothing, no --  
5 today, for example, or before this, even before  
6 this subpoena, I don't know how far before that  
7 couldn't even log into a dash, no access, no  
8 rights at all, and the only other person that  
9 would have done it would have been Alex Kochel but  
10 nowhere near as often as Darren and that would  
11 have been only early, early days 2010.

12 Q When did FXCM personnel cease  
13 monitoring the dashboards at Effex?

14 A I can't recall, I have to get you  
15 the date but 2013 or early 2014, something in that  
16 region. I can't recall the exact date, I have to  
17 try to figure it out, I don't know how to figure  
18 that out.

19 Q Do you know whether FXCM employees  
20 monitored the dashboards any other liquidity  
21 providers?

22 A FXCM didn't monitor the dashboards  
23 of other liquidity providers, but they did monitor  
24 the identical information that Darren's monitoring  
25 on this dashboard. In fact, this dashboard -- so

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1 John Dittami

2 had concerns they'd spin me out, you know, they  
3 say you can't be here, I go open my own shop and  
4 then the business dies. It's natural paranoia. I  
5 don't want them to stealing my peak, I don't want  
6 them learning, hey, this could really work. My  
7 effort was as an employee and -- when I was an  
8 employee, now they know it's going to work, I  
9 don't want them trying to do it themselves now  
10 that they know it works, I don't want them  
11 stealing IP, I don't want them, you know. Yeah, I  
12 have a concern, I naturally have to be concerned  
13 about protecting my business of Effex.

14 MR. DALY: I have no follow-up  
15 questions on that.

16 MR. ROMEU-MATTA: On the exhibit.

17 BY MR. DALY:

18 Q Mr. Dittami, I want to direct your  
19 attention to the time stamp of 8:42 a.m. where you  
20 appear to type to Mr. Merwitz, "basically until we  
21 get your new e-mail can't have you send  
22 externally," do you see that?

23 A Yes.

24 Q Can you explain to me what's being  
25 communicated there?



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1 John Dittami

2 A Absolutely. We got Darren an Effex  
3 Capital e-mail here, the purpose is, as you could  
4 see, the reason that it came up here, he tried  
5 calling me, he couldn't wake me up, he was trying  
6 to call Jack, couldn't wake him up. His job is to  
7 contact an Effex person, he couldn't. There's a  
8 risk issue here, I want him to have an Effex  
9 e-mail so he can e-mail Citibank, for example, if  
10 there's a trade out and say, why is there a trade  
11 out. FXCM wants him to know why there's trade  
12 outs because we have trade outs together, so he  
13 needs an e-mail -- I want him to not use an FXCM  
14 -- so in this case he was monitoring, there is a  
15 risk issue, there is a risk issue, he couldn't get  
16 in touch with me, he can't get in touch with my  
17 head dealer Jack, he's trying, and I'm saying,  
18 look, this is a risk situation I need in an  
19 emergency him to have an Effex e-mail, be able to  
20 e-mail Citi and say, is there a trade out, is  
21 there a real problem, if there is tell FXCM to  
22 turn us off, that means we have risk problems  
23 together.

24 Q It seems, correct me if I'm wrong,  
25 that there may have been issue with him reaching

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1 John Dittami

2 out externally via his FXCM e-mail, do you recall  
3 anything like that?

4 A Yeah, I don't want him reaching out  
5 to any Effex customer, I don't want him talking to  
6 my Effex customer, it's not his customer. I don't  
7 want him doing anything with an Effex -- I don't  
8 want him doing anything with an FXCM affiliation,  
9 I don't want him reaching out to an Alpari with an  
10 FXCM name, I actually don't want him to reach out  
11 to Alpari period. I don't want him calling anyone  
12 like that, period.

13 Citi is the one, Citi is where the  
14 risk resides and I don't Citi -- you know, I don't  
15 want to continue to keep this rumor mill going  
16 with Citi because they see an FXCM employee, you  
17 know, in the event they can't get in touch with  
18 Jack, can't get in touch with John, there is a  
19 risk issue to do anything that says from FXCM  
20 asking about a trade out, the reality is the trade  
21 out is going to be between FXCM and us, it's just  
22 bad perception.

23 Q When you say a trade out is going to  
24 be -- a trade out is going to be between FXCM and  
25 us, I assume you meaning Effex?

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1 John Dittami

2 Q Who widened the spreads?

3 A That would have to be FXCM's  
4 decision to do so. We don't control that, we  
5 can't touch that. FXCM has to make a decision, do  
6 it. If execution is bad I would ask them to do  
7 that.

8 Q Why was it done?

9 A Panelized providers who aren't  
10 providing good execution, force the providers to  
11 get their butts inline and behave and provide good  
12 execution.

13 Q Did FXCM allow Effex to have  
14 priority over other identical bids and offers made  
15 by market makers allowing Effex orders to be  
16 executed over identical bids and offers made by  
17 other market makers?

18 A Yes, they allowed us to win ties but  
19 it was allowed with a contingency.

20 Q What's the contingency?

21 A We have to be best execution, if  
22 we're not best execution we lose ties. I think  
23 they might have taken it away from us at some  
24 points, they threatened to a lot at least. We  
25 have to be best execution or we don't win ties.

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1 John Dittami

2 A I mean, Even Milazzo would be able  
3 to look it up, I'm guessing. They keep books and  
4 records, they could look it up. I don't  
5 unfortunately have data.

6 Q To your knowledge, did other  
7 liquidity providers have the ability to win all  
8 ties?

9 A To my knowledge, every liquidity  
10 provider had the ability to win ties if they were  
11 best execution.

12 Q So there were times with other  
13 liquidity providers would win ties and not Effex?

14 A I think there were a few times, but  
15 as a general rule Effex was always best execution.  
16 So as a general rule and I don't know -- it's not  
17 -- I can't be perfect in all way but, you know, we  
18 were best execution every single month since we  
19 ever began.

20 Q Did the winning of all ties help  
21 Effex in realizing profit in its market making  
22 trades?

23 A Yes and no, but net yes.

24 Q Could you explain?

25 A So what it helps us do is increase

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COMMODITY FUTURES TRADING COMMISSION

-----x

IN THE MATTER OF:

RETAIL FOREX FRAUD

-----x

140 Broadway  
New York, New York

April 8, 2016  
9:51 a.m.

CONTINUED DEPOSITION of JOHN DITTAMI, the  
witness herein, taken by the Commodity Futures  
Trading Commission, pursuant to Agreement, held at  
the above-noted time and place, before a Notary  
Public of the State of New York.

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1 John Dittami

2 price to try to get the trades you want, I just  
3 want to be clear.

4 Q Let me clarify. But you see the  
5 price of the liquidity provider, so seeing that  
6 price of the liquidity provider at 1.30000 would  
7 allow Effex to submit a bid of 1.29999 and still  
8 win the trade?

9 A That is correct.

10 Q If it chooses to win a trade it can  
11 win a trade?

12 A If it chooses to win -- if it  
13 chooses to price to win a trade, it could choose  
14 to price to win a trade or a portion of a trade or  
15 some of the trade.

16 Q That's a choice that Effex would be  
17 making, the algorithm would be making?

18 A It's a choice that the algorithm is  
19 making, yes.

20 Q The ability to win all ties and see  
21 all the bids and offers and the .1 PIP advantage  
22 in the Euro U.S. dollar were beneficial to Effex  
23 because it allowed Effex to capture a larger  
24 portion of trades; is that correct?

25 A Yes, that's correct.

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2 Q I understand.

3 A I don't want to call it that. It's  
4 an advantage in that Effex has logic intelligence  
5 to know how to manage it, but if you wish to use  
6 the term advantages I don't want to make it  
7 difficult so I'm okay.

8 Q Let's not use the term advantage.  
9 The fact that Effex has access to bid and offers  
10 that can win all ties and has a .1 bid mark of  
11 advantage in the Euro U.S. dollar currency pair is  
12 also beneficial to FXCM because FXCM is receiving  
13 a rebate from that are effected by Effex Capital?

14 A That is correct.

15 Q Is it fair to say that FXCM had a  
16 stake in the trades effected by Effex Capital as  
17 shown in the FXCM invoice to Effex Capital?

18 A It's fair to say they had a stake --  
19 yes, it's definitely fair to say they had a stake.  
20 Their stake is much smaller than the value of the  
21 markup, so their stake is not -- they have a stake  
22 but that stake is way overwhelmed by the fact that  
23 the revenue model at \$110 per million here far  
24 exceeds this which is \$10 and therefore the \$10 is  
25 less money they make against money we make. So

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2 they have a stake in volume rising in the case of  
3 Euro dollar by \$21 minus \$10 is \$11. I just  
4 wanted to clarify this.

5 They don't have a stake in any other  
6 currency pair or any other thing. So they have an  
7 \$11 -- the way I would look at it, we didn't look  
8 at it this way, we looked at it as how do we  
9 provide best execution most of the time, how do we  
10 get more liquidity benefits most of the time. But  
11 the way -- in the way you've described, let's say  
12 there's an \$11 stake by FXCM because they're  
13 giving up the 10th, not a \$21 stake, but then  
14 actually it went to \$5 -- actually when it went to  
15 6 it was a negative stake, when our payment of the  
16 Euro with the 6 actually had a negative stake for  
17 us to execute.

18 Also, I just have to say, their  
19 stake is really important to understand that their  
20 economic interests and why there's conflict with  
21 us, their stake is not the \$11, their stake is  
22 getting the \$110, and their stake is getting the  
23 \$110 over and over and over again. Their stake is  
24 not having a customer slip or slips a weird  
25 strange word to define that. Not having the



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2 customers have a bad execution experience is  
3 easier to define, because they want to see that  
4 customer trade and trade and trade, for that \$11  
5 or negative \$5 when it went to \$6 per million,  
6 they were actually paying it out, they're actually  
7 effectively losing money in that situation.

8 I don't know if they stopped that  
9 situation, it was zero, whatever, they didn't have  
10 a stake then, whatever it was, they're really  
11 trying to get the \$110 and they're trying to get  
12 the customers a good execution, the customer get  
13 110 over and over and over again, they're also  
14 trying to get the customer to get good execution,  
15 they don't want to get fines, they also want the  
16 customer to get the good execution because making  
17 110 is a lot more than making 11 or less.

18 I just want to clarity, they had a  
19 stake but the stake is not their driving economic  
20 force and it wasn't always positive.

21 Q Okay. Are you familiar with a term  
22 hold timer with an R?

23 A Yes.

24 Q What is your understanding of that  
25 term?